



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Application of Citizens
Telecommunications Company of
California Inc. (U-1024-C) dba Frontier
Communications of California to
Modify D.04-02-010, the NRF Review
Scheduling Order.

A.03-04-002

**THE DIVISION OF RATEPAYER ADVOCATES' REPLY TO
CITIZENS TELECOMMUNICATIONS COMPANY OF
CALIFORNIA, INC.'S RESPONSE TO DRA'S PETITION FOR
MODIFICATION OF D.04-02-010**

I. INTRODUCTION

Pursuant to Rule 47(g) of the California Public Utilities Commission's (Commission) Rules of Practice, the Division of Ratepayer Advocates (DRA) hereby submits its Reply to Citizens Telecommunications Company of California, Inc., d/b/a Frontier Communications of California (Frontier)'s Response to DRA's Petition for Modification of D.04-02-010. On May 25, 2006, DRA filed a Petition for Modification of D.04-02-010 to request additional audit funds (Petition to Modify). On June 12, 2006, Frontier filed its Response to DRA's Petition to Modify.

On June 16, 2006, DRA requested, by email, authority from Administrative Law Judge (ALJ) O'Donnell to file a reply to Frontier's Response to DRA's Petition to Modify. On June 19, 2006, ALJ O'Donnell, by email, granted DRA's

request and ordered that a reply be filed by no later than June 27, 2006. Accordingly, the submission of this reply is timely and permissible.

II. DISCUSSION

Frontier, in its Response, opposes DRA's request for additional audit funds of \$70,000. For reasons discussed below, DRA has demonstrated good cause for its request. Accordingly, the Commission should reject Frontier's arguments and grant DRA's request promptly.

A. DRA Has Demonstrated Good Cause For Its Request.

1. Frontier Failed to Provide Data Responses in a Timely Manner.

In D.04-02-010, the Commission authorized DRA to spend \$300,000 for the Frontier audit.¹ Of this \$300,000 amount, DRA budgeted \$245,000 for the audit and \$55,000 for post-audit work including hearing and testimony. However, Frontier's failure to provide data responses in a timely manner caused DRA to incur additional expenses beyond the budgeted amount for the audit portion.

Frontier asserts that it responded to the data requests in the most expeditious and diligent manner possible.² DRA disagrees with Frontier's assertion. While Frontier did respond to DRA's consultants' data requests, the responses were not provided timely. In D.04-02-010, the Commission ordered the company to "fully cooperate with [D]RA and its consultants as they conduct the audit."³ Based on DRA's and the consultants' past audit experience, 10 or 14 days is considered a reasonable amount of time for companies to respond to data requests. However, according to Overland consultants, Frontier took an average of 49 days to provide completed data responses during the audit.

¹ D.04-02-010, p. 10.

² Frontier's Response, p. 2.

³ D.04-02-010, p. 9.

The company's delay caused the consultants to spend additional time and effort to check the status and follow-up on the data requests and as a result, caused the consultants to incur additional expenses beyond the amount originally allocated for the audit portion. While the consultants did generously write-off much of the additional time that they spent on the follow-up to the data requests, they could not completely mitigate the impact of a 49-day average for the data responses.⁴

2. Frontier Requested Consultants to Perform Additional Analysis on the Draft Audit Report.

After Frontier received and reviewed the draft audit report, Frontier began looking for ways to reduce the auditor's recommended calculated shareable earnings. The company produced additional data and requested the consultants to perform additional analysis and rewrite certain portions of the draft audit report. Accordingly, this additional work requested by Frontier on the draft audit report also caused the consultants to incur more expenses beyond the originally allocated amount. About ten months after the originally scheduled date, the consultants were finally able to issue their audit report.

3. DRA and Frontier Engaged in Settlement Negotiations.

Soon after the final audit report was issued, DRA and Frontier engaged in many rounds of negotiations on the key audit issues. These negotiations occurred over several months and required the assistance of the consultants to perform further review and analysis. This effort also caused DRA to spend about \$30,000 beyond the originally allocated budget for the audit portion.

⁴ The consultants wrote-off about \$50,000 associated with this effort.

B. Since the Consultants Performed The Audit, Only They Can Testify And Explain The Audit Report To the Commission.

As stated in DRA's Petition to Modify, it is unclear at this time as to whether and when the Commission will formally examine the audit. However, if and when the Commission does decide that hearing and/or further work is necessary, DRA will need additional funds in order to retain Overland consultants and comply with the Commission orders. In D.04-02-010, the Commission authorized DRA to spend up to \$300,000.⁵ However, if more funds are needed, the Commission stated that DRA may request for more funds by filing a petition for modification.⁶ DRA originally budgeted approximately \$245,000 for the audit portion and \$55,000 for hearing. However, for the reasons described above, the audit portion exceeded the budgeted amount and as a result, there are no audit funds remaining.

Since the audit was not conducted by DRA but by the outside consultants, DRA needs these consultants in order to testify and answer questions on the audit report. DRA will not be able to perform these tasks. In D.04-02-010, the Commission noted that:

The future NRF review will address the regulatory framework under which Citizens will operate. The services Citizens' customers will receive, and the rates, charges and rules under which service will be provided, will be directly affected by the results of the future NRF review. Therefore, it will be a significant proceeding.⁷

The recommendations that the Commission ultimately adopts for the audited years of 2001 to 2003 will have a direct impact on how the company should operate on a

⁵ D.04-02-010, p.10. This decision was based primarily on the fact that about the same amount (\$300,000) was spent for Roseville's audit in connection with their NRF review.

⁶ Id.

⁷ D.04-02-010, pp. 5-6.

going-forward basis. The audit report will provide the Commission with the necessary information to make the appropriate recommendations, but to explain the audit report, the Overland consultants are necessary because they performed the audit.

Additionally, as the Commission noted in D.04-02-010, DRA is the only interested party in this proceeding and may possibly be the only interested party in the future audit review proceeding.⁸ Accordingly, the consultants' testimony is also necessary in order for DRA to represent and protect the interests of ratepayers. The Commission stated:

The Commission is required by § 309.5(c) to provide [D]RA with sufficient resources and personnel to “ensure that customer and subscriber interests are fairly represented in all significant proceedings. The future NRF review will be a significant proceeding, and it is necessary for [D]RA to conduct an audit to represent ratepayer interests adequately, and for the Commission to have a sufficient record on which to base its decision. As a result, it is necessary to provide [D]RA with sufficient resources to hire consultants to do the audit in order to comply with §309.5(c).²

Moreover, to ensure proper ratepayer representation, the Commission should authorize the additional audit funds requested by DRA.

C. DRA's Request Is Not Premature.

Frontier, in its Response, states that DRA's request for additional audit funds is premature because “it is not clear at this juncture what further proceedings will be necessary to address the audit results.”¹⁰ While DRA is aware that no determination has yet been made by the Commission as to whether and when it will formally examine the audit results, the Commission should resolve DRA's

⁸ D.04-02-010, p. 6.

² D.04-02-010, p. 7.

¹⁰ Frontier's Response, p. 4.

request for additional audit funds now rather than later so that the parties can move forward speedily with the examination when it is eventually ordered by the Commission. Frontier has not provided any good reason as to why this issue should not be resolved now. All pertinent information necessary to make this determination has been provided to the Commission in DRA's Petition to Modify and herein. Therefore, DRA urges the Commission to rule on this issue now.

D. DRA's Request Will Not Unduly Burden Frontier's Ratepayers.

Frontier asserts the additional requested amount of \$70,000 will unduly burden its ratepayers.¹¹ Frontier's assertion is without merit. According to their records, Frontier operates in 24 states and has subsidiaries operating in 48 states. In 2003, Frontier had 130,000 access lines for NRF-regulated service areas in California.¹²

Furthermore, according to the audit report, Frontier's California regulated operating revenue for year 2003 was approximately \$87,700, 807. In view of this figure, the request of additional \$70,000 represents less than 1% of Frontier's operating revenue. Similarly, Frontier's regulated net income for year 2003 was \$21,281,477, and in view of this figure, the \$70,000 funding request represents less than 3% of its net income. Moreover, DRA's request of \$70,000 is a very small amount when compared to the company's operating revenues and access lines and can be recovered in rates.

E. DRA's request of \$70,000 is Reasonable.

DRA's request of \$70,000 is based on the following assumptions:

- Compensation for approximately one month work of the consultants. The work would include testimony preparation, hearings and assistance with briefs;

¹¹ Frontier's Response, p. 5.

¹² D.04-02-010, p. 4.

- Compensation for two consultants. The assistance of both of the consultants are necessary for hearing and/or any further work ordered by the Commission because both performed the audit and were responsible for different sections/issues of the audit report.

While a period of one-month appears reasonable for testimony preparation, hearing and post-hearing work, if these tasks require more than one-month time of the consultants, the Commission should compensate the consultants for the additional time incurred.

F. DRA’s Request Will Not Competitively Disadvantage Frontier.

Frontier states that DRA’s request will undermine Frontier’s ability to compete on price because “none of its competitors will have to assess an additional surcharge to recover audit-related costs incurred by DRA.”¹³ Frontier also states that it “is not aware of any of its competitors have or will face anything near the regulatory scrutiny Frontier has faced during this audit.”¹⁴ Frontier’s statements are without merit. Regulatory audits performed by the Commission are neither new nor unusual. In fact, under Public Utilities (PU) Code §314.5, the Commission is required to audit the books and records for regulatory purposes at least every three years as follows:

314.5. The commission shall inspect and audit the books and records for regulatory and tax purposes (a) at least once in every three years in the case of every electrical, gas, heat, telegraph, telephone, and water corporation serving over 1,000 customers, and (b) at least once in every five years in the case of every electrical, gas, heat, telegraph, telephone, and water corporation serving 1,000 or fewer customers. An audit conducted in connection with a rate proceeding shall be deemed to fulfill the requirements of this

¹³ Frontier’s Response, p. 6.

¹⁴ Id.

section. Reports of s¹⁵uch inspections and audits and other pertinent information shall be furnished to the State Board of Equalization for use in the assessment of public utilities.¹⁶

Accordingly, the Commission is statutorily required to perform regulatory audits on a regular basis.

In the past, the Commission has audited other incumbent local exchange carriers including Pacific Bell Telephone Company, Verizon Telecommunications, Inc. and Roseville Telephone Company. Many of the audits conducted by the Commission in the past have also been funded by the utilities as noted in D.04-02-10. Therefore, neither the audit of Frontier nor the payment for this audit is unique to Frontier such that it would place them at a competitive disadvantage. In fact, in D.04-02-010, the Commission notes it has been more than ten years since an audit of Frontier's operations has been performed.¹⁷ In short, the audit of Frontier has been long overdue.

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¹⁵ D.04-02-010, pp. 3-4.

¹⁶ PU Code §314.5.

¹⁷ D.04-02-010, p. 6.

III. CONCLUSION

For the foregoing reasons and the reasons set forth in DRA's Petition to Modify, the Commission should grant DRA's request for additional audit funds of \$70,000 promptly.

Respectfully submitted,

/s/ SINDY J. YUN

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June 27, 2006

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **THE DIVISION OF RATEPAYER ADVOCATES' REPLY TO CITIZENS TELECOMMUNICATIONS COMPANY OF CALIFORNIA, INC.'S RESPONSE TO DRA'S PETITION FOR MODIFICATION OF D.04-02-010** in **A.03-04-002** by using the following service:

☒ **E-Mail Service:** sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

☐ **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on June 27, 2006 at San Francisco, California.

/s/ ALBERT HILL

Albert Hill

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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